No. 258

FILED
JUL 1 7 1955
JOHN T. FEY, Clerk

IN THE

United States Court of Appeals

FOR THE THIRD CIRCUIT

No. 11,588

AMERICAN WELL AND PROSPECTING COMPANY,

Petitioner,

—against—

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

ON PETITION FOR REVIEW OF THE DECISION OF THE TAX COURT OF THE UNITED STATES

[redacted] APPENDIX FOR PETITIONER

CRAVATH, SWAINE & MOORE,
Attorneys for Petitioner,
15 Broad Street,
New York 5, N. Y.

HOYT A. MOORE
GEORGE G. TYLER
ALBERT ROSENBLUM
Of Counsel.

RECEIVED & FILED
MAY 5 1955
IDA U. SHERROFF
Clerk

May 4, 1955

TABLE OF CONTENTS

	PAGE
BRIEF:	
Statement of Question Involved	1
Statement of the Case	2
Nature of the Proceeding	2
The Decision to be Reviewed	2
The Facts	3
The Petitioner's Position	4
Statutes and Regulations Involved	4
Argument	6
Under the Mandatory Language of Section 710(c)(3)(A) of the Internal Revenue Code of 1939, the Petitioner is Entitled to a Carry-back of its Unused Excess Profits Credit from 1946 to 1944	6
The Petitioner was Admittedly in Existence for the Entire Calendar Year 1946	7
The Decisions in Other Circuits are Also Contrary to the Tax Court's Decision in This Case.	9
Conclusion	11
APPENDIX:	
Docket entries	1a
Opinion of The Tax Court of the United States filed December 21, 1954	3a
Decision of The Tax Court of the United States entered December 29, 1954	11a

PAGE

Stipulation of facts 12a

Agreement dated December 19, 1945, between American Well and Prospecting Company and Bethlehem Supply Company (Stip., Ex. 8-H) .. 19a

Balance sheet of American Well and Prospecting Company at December 31, 1945 (Stip., Ex. 9-I) 26a

Minutes of meeting of stockholders of American Well and Prospecting Company held April 16, 1946 (Stip., Ex. 10-J) 27a

Minutes of meeting of stockholders of American Well and Prospecting Company held April 15, 1947 (Stip., Ex. 11-K) 33a

Minutes of meeting of Board of Directors of American Well and Prospecting Company held April 22, 1946 (Stip., Ex. 12-L) 39a

Minutes of meeting of Board of Directors of American Well and Prospecting Company held April 28, 1947 (Stip., Ex. 13-M) 42a

Minutes of meeting of Board of Directors of American Well and Prospecting Company held November 3, 1947 (Stip., Ex. 14-N) 46a

APPENDIX

DOCKET No. 42958

AMERICAN WELL AND PROSPECTING COMPANY,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

APPEARANCES:

For Petitioner: HOYT A. MOORE, Esq.
GEORGE G. TYLER, Esq.
RICHARD L. MUSGRAVE, Esq.

For Respondent: JOHN J. HOPKINS, Esq.

10/19/54—Assigned to Judge Murdock, Div. 3.

Docket Entries

1952

July 28—Petition received and filed. Taxpayer notified. Fee paid.

" 31—Copy of petition served on General Counsel.

" 28—Request for Circuit hearing in New York, N. Y. filed by taxpayer. 8/6/52—Granted.

Sept. 12—Answer filed by General Counsel.

" 24—Copy of answer served on taxpayer, New York, N. Y.

1954

Jan. 21—Hearing set April 19, 1954, New York, N. Y.

Apr. 19—Hearing had before Judge Baar on the merits. Stipulation of Facts filed. Briefs due 6/1/54: Replies due 6/21/54.

May 17—Transcript of Hearing 4/19/54 filed.

" 28—Motion for extension to June 10, 1954 to file brief, filed by taxpayer. 5/28/54—Granted.

Docket Entries

1954

June 9—Brief filed by General Counsel. 6/10/54—Copy served.

" 10—Brief filed by taxpayer. 6/10/54—Copy served.

" 24—Reply Brief filed by taxpayer.

Dec. 21—Opinion filed, Judge Murdock, Decision will be entered for the respondent. Copy served.

" 29—Decison entered. Judge Murdock, Div. 3.

1955

Mar. 2—Petition for Review by U. S. Court of Appeals for the Third Circuit filed by taxpayer.

" 2—Proof of Service filed.

" 2—Designation of Contents of Record with acknowledgment of service thereon filed by petitioner.

Opinion of The Tax Court of the United States Filed December 21, 1954

23 T. C. No. 61

THE TAX COURT OF THE UNITED STATES

AMERICAN WELL AND PROSPECTING COMPANY, Petitioner, v. COMMISSIONER OF INTERNAL REVENUE, Respondent.

Docket No. 42958.

Filed December 21, 1954.

EXCESS PROFITS TAX—CREDIT CARRY-BACK—DISCONTINUANCE BY SALE—SECTION 710(c) (3).—A corporation, on January 1, 1946, sold all of its assets to a related corporation which assumed all of the seller's obligations and liabilities. The seller ceased to operate a business but remained in existence to cooperate with the purchaser so that the latter might derive the benefit of certain contracts and claims that were unassignable. The seller after two years again engaged in business activities, but they were unrelated to its original enterprise.

Held, the selling corporation was not entitled to an unused excess profits credit carry-back from 1946 to 1944.

George G. Tyler, Esq., for the petitioner.

John J. Hopkins, Esq., for the respondent.

MURDOCK, *Judge:* The Commissioner determined a deficiency of $64,047.43 in excess profits tax for the calendar year 1944. It arose from the disallowance of an unused excess profits credit carry-back from 1946.

Opinion of The Tax Court of the United States Filed December 21, 1954

All of the facts have been stipulated.

The petitioner, which was organized on May 13, 1931, and is a Texas corporation, filed its tax returns for the years 1944, 1945 and 1946 with the collector of internal revenue for the twelfth district of Pennsylvania.

The petitioner was engaged in the business of manufacturing and selling oil well rotary drilling equipment and accessories and of manufacturing armaments for the United States Government for a number of years prior to 1946. Bethlehem Steel Company, at all times material hereto a wholly owned subsidiary of Bethlehem Steel Corporation, acquired all of the outstanding stock of the petitioner in 1944 and has since continued to own that stock. The petitioner entered into a contract on December 19, 1945 with Bethlehem Supply Company, hereinafter referred to as Supply, which was then and still is a wholly owned subsidiary of Bethlehem Steel Corporation, for the sale of all of its transferable assets and the assumption of all of its transferable obligations and liabilities as of the opening of business on January 1, 1946.

The petitioner agreed to sell to Supply all of its real property, machinery, equipment, raw materials, goods in process or completed, contracts and leases, patents, trademarks and trade names, cash and receivables and all other property except certain unassignable rights and interests. The contract of sale also excluded the petitioner's corporate records and franchise and certain equipment physically located in its plant but owned by the United States Government or agencies thereof. Supply agreed to assume, pay, perform or discharge all of the liabilities and obligations of the petitioner as of the opening of business on January 1,

1946, and further agreed to perform for the account of the petitioner all obligations of the petitioner with respect to certain contracts and leases relating to machinery and equipment owned by the United States Government and located at the petitioner's plant. It was further agreed that if the petitioner subsequently purchased any such equipment it would, unless prohibited by its agreement with the Government, resell the same to Supply at cost.

The contract further provided that as soon after the closing date as conveniently possible Supply would pay to the petitioner for the properties to be sold an amount which would be the aggregate net book value of such properties less the aggregate book value of all the liabilities and obligations of the petitioner assumed by Supply. The petitioner also agreed that in the event any of the rights or interests or any of the obligations under any of its contracts were not assignable to Supply, it would seek to obtain any consents necessary to permit such assignments. The petitioner was required to cooperate with Supply, if such consents could not be obtained, to the end that the obligations of the petitioner should "be performed in such manner that the value and benefits of the contract in question shall be preserved and shall inure directly or indirectly to the benefit of the Supply Company."

The contract was closed on January 2, 1946, by the delivery of instruments of conveyance dated December 31, 1945, and by assumption by Supply of all liabilities and obligations of the petitioner as of the opening of business on January 1, 1946.

Among the assets owned by the petitioner and which were covered by the agreement were the following:

Claims against the United States Government for payments in connection with the termination of a war contract which was settled in May 1946, after correspondence and negotiations, for approximately	$270,000.00
Claim against the United States Government for overpayment of rentals which was settled in August 1946 for approximately	$ 3,300.00
Claim against the United States Government for a refund of petitioner's 1943 excess profits tax, which claim had not been collected at the time of the hearing herein and which amounted to ...	$ 25,526.36

The petitioner had correspondence in 1946 and 1947 with various United States Government departments with respect to clean-up work which it was obligated to do under the terms of contracts executed in prior years. The petitioner purchased from the United States, in connection with this work, certain material and machinery owned by the Government but located on the property formerly owned by the petitioner. The amounts necessary for such purchases were furnished by Supply and the proceeds of the sales of such material and machinery were realized by Supply. The petitioner, in October 1951, settled for approximately $1,300 a claim asserted against it by the United States Government for defective material delivered prior to January 1, 1946. The settlement negotiations with respect to the foregoing claims and the purchases and sales of the machinery and other material were conducted by

persons who were officers of the petitioner and also officers of Supply, Bethlehem Steel Company and Bethlehem Steel Corporation. These persons did not receive any compensation from the petitioner during 1946 and 1947 and were compensated by one or more of the other companies.

No entries of receipts or of disbursements were made on the petitioner's books in connection with the settlement of the foregoing claims or in connection with the purchases and sales during the years 1946 and 1947 and all receipts or payments with respect thereto were or will be realized or made by Supply. A former employee of the petitioner commenced an action in June 1946 for alleged unpaid compensation in the amount of $219,000. The petitioner filed an answer and took other action in that suit until November 1, 1948, when it was dismissed following the death of the plaintiff. The expenses of the litigation were borne partly by Supply and partly by former stockholders of the petitioner from whom the Bethlehem Steel Company had purchased the petitioner's stock.

The net proceeds of the sale of the petitioner's properties and assets amounted to $894,929 and this amount was credited to the petitioner in the intercompany bank account maintained by subsidiary companies of Bethlehem Steel Corporation. No formal action to dissolve the petitioner was ever taken by its board of directors or sole stockholder and annual meetings of both were held during 1946 and 1947 for the purpose of electing directors and officers. The balance sheets of the petitioner at the close of business on January 2, 1946, at December 31, 1946, and at December 31, 1947 were identical and were as follows:

Opinion of The Tax Court of the United States Filed December 21, 1954

Assets	
Accounts Receivable (intercompany bank account)	$894,929.00
Capital	
Capital Stock	$100,000.00
Paid-in Surplus	46,513.56
Earned Surplus	748,415.44
	$894,929.00

The petitioner acquired four sections of a dry dock in 1948 for approximately $800,000 and in 1949 purchased another section. The petitioner's dry dock facilities represented an investment of approximately $1,500,000 at the time of the hearing, and it was in the business of renting the dry dock.

The parties have stipulated that the petitioner did not have any excess profits net income for the taxable year 1946 and if the petitioner is entitled to any unused excess profits credit the amount would be $74,909.27.

The petitioner argues that it is entitled to carry back the unused excess profits credit from 1946 since no action to dissolve it had ever been taken, no liquidation distribution had ever been made, and because it was in fact still in existence and engaged in business at the time of the hearing. The petitioner further argues that its continued existence was required by the contract of sale of December 19, 1945, since it was under an obligation to cooperate with Supply in connection with the completion of the unassignable contracts and the prosecution and collection of the unassignable claims.

Opinion of The Tax Court of the United States Filed December 21, 1954

Existing law, at the time the Revenue Bill of 1942 was under consideration, permitted corporations to carry forward for two years net operating losses and unused excess profits credits. Congress recognized that such provisions were of benefit only in periods of increasing business activities and would not alleviate the suffering of corporations in periods of declining profits, especially at the close of a war economy. It was anticipated that wartime shortages and controls would greatly upset the normal cycle of the matching of taxable income against deductible expenses and that many expenses, such as those for maintenance and repairs, would be deferred to postwar years when they would not be available to offset wartime earnings. This postponement of deductible expenses to years in which the excess profits tax was not in effect would have imposed a great tax burden on corporations. The two-year carry-back provision was adopted to afford relief in such hardship cases. S. Rept. No. 1631, 77th Cong., 2d Sess., pp. 51-52 (1942-2 C. B. 504, 546-547). It was retained for a year beyond the repeal of the excess profits tax itself in order to be sure that business had an opportunity to apply reconversion expenditures to reduce wartime taxes. S. Rept. No. 655, 79th Cong., 1st Sess., p. 19 (1945 C. B. 621, 636). Section 122(c) of the Revenue Act of 1945 allowed corporate taxpayers to carry back to 1944 and 1945 any unused excess profits credit for 1946 as defined in section 710(c) of the Internal Revenue Code of 1939.

The petitioner, at the beginning of 1946, disposed of the assets essential to the continued operation of the business which it had conducted with those or similar assets in

1944. Those assets were used during 1946 by Supply to carry on the business theretofore conducted by the petitioner. The results of the operation of that business during 1946 had no effect upon the petitioner but there might have been no excess profits credit to carry back to 1944 had the petitioner continued to conduct the business during 1946. Where the business was thus transferred to another and no longer operated by the petitioner, the latter was not intended by Congress to have the excess profits credit, wholly unnecessary for 1946, carried back to offset income of a year when the petitioner had operated the business. *Winter and Company, Inc.*, 13 T. C. 108, appeal dismissed (C. A. 7, 1951); *Diamond A Cattle Company*, 21 T. C. 1; *Wheeler Insulated Wire Company, Inc.*, 22 T. C. 380. Cf. *Wier Long Leaf Lumber Co.*, 173 F. 2d 549, affirming in part and reversing in part 9 T. C. 990. It makes no difference that after several years the petitioner began to engage in a new and unrelated business.

Decision will be entered for the respondent.

Decision of The Tax Court of the United States Entered December 29, 1954

THE TAX COURT OF THE UNITED STATES

WASHINGTON

Docket No. 42958

AMERICAN WELL AND PROSPECTING COMPANY,
Petitioner.

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Pursuant to the determination of the Court, as set forth in its Opinion, filed December 21, 1954,
it is

ORDERED AND DECIDED: That there is a deficiency in excess profits tax of $64,047.43 for the calendar year 1944.

Entered: Dec. 29, 1954

(Signed) J. E. MURDOCK
Judge.

Stipulation of Facts

THE TAX COURT OF THE UNITED STATES

Docket No. 42958

AMERICAN WELL AND PROSPECTING COMPANY,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

IT IS HEREBY STIPULATED that, for the purposes of this proceeding, the following statements shall be accepted as facts without prejudice to the right of either party to introduce other and further evidence not inconsistent therewith:

1. The petitioner, which was organized on May 13, 1931, is a corporation organized and existing under the laws of the State of Texas with its principal office at Corsicana, Texas, and its mailing address at 701 East Third Street, Bethlehem, Pennsylvania.

2. The petitioner filed its corporation income and declared value excess profits tax return and its corporation excess profits tax return for the taxable year 1944 with the Collector of Internal Revenue for the 12th Collection District of Pennsylvania at Scranton, Pennsylvania. Attached hereto are copies of said returns marked Exhibits 1-A and 2-B, respectively.

3. The petitioner filed its income and declared value excess profits tax return for the taxable year 1945 and its

income tax returns for the taxable years 1946 and 1947 with the Collector of Internal Revenue for the 12th Collection District of Pennsylvania at Scranton, Pennsylvania. Attached hereto are copies of said returns marked Exhibits 3-C, 4-D and 5-E, respectively.

4. A copy of the Commissioner's notice of deficiency dated June 6, 1952, addressed to the petitioner is attached as an Exhibit to the petition herein.

5. For a number of years prior to January 1, 1946, the petitioner was engaged in the business of manufacturing and selling oil well rotary drilling equipment and accesories and also in the manufacture of armaments for the United States Government.

6. In 1944, Bethlehem Steel Company, a Pennsylvania corporation, acquired all the outstanding stock of the petitioner and has continued to own such stock to the present time. All the outstanding stock of the aforesaid Bethlehem Steel Company was and still is owned by Bethlehem Steel Corporation, a Delaware corporation.

7. The Board of Directors of the petitioner, at a special meeting on December 17, 1945, approved an agreement whereby all the petitioner's assets, except those more specifically described in the agreement, were to be conveyed to, and all the petitioner's liabilities were to be assumed by, Bethlehem Supply Company, a Delaware corporation (hereinafter called the Supply Company), which was also engaged in the manufacture and sale of oil well equipment. The petitioner's stockholders, at a special meeting on December 18, 1945, also approved said agreement. Attached hereto are copies of the minutes of the aforesaid Board of Directors

meeting and stockholders meeting, marked Exhibits 6-F and 7-G respectively.

8. During the year 1945 and up to the present time, all the outstanding stock of the Supply Company was owned by the aforesaid Bethlehem Steel Corporation.

9. By an agreement dated December 19, 1945, a copy of which is attached hereto and marked Exhibit 8-H, the petitioner agreed to sell and transfer all its properties and assets, except those more specifically described in the agreement, as of the opening of business on January 1, 1946, to the Supply Company.

10. Pursuant to the terms of the aforesaid agreement, all such properties and assets of the petitioner which were transferable were transferred by the petitioner to the Supply Company by instruments dated December 31, 1945, and delivered on January 2, 1946, and all liabilities and obligations of the petitioner were assumed by the Supply Company as of the opening of business on January 1, 1946.

11. The net proceeds of the sale of the petitioner's properties and assets amounted to $894,929.00 and such amount was credited to the petitioner in the intercompany bank account maintained by Subsidiary Companies of Bethlehem Steel Corporation.

12. The balance sheet of the petitioner at the close of business on December 31, 1945, is as stated in the schedule attached hereto and marked Exhibit 9-I.

13. The balance sheets of the petitioner at the close of business on January 2, 1946, at December 31, 1946, and at December 31, 1947, were identical and are as follows:

Assets	
Accounts Receivable (inter-company bank account)	$894,929.00
Capital	
Capital Stock	$100,000.00
Paid in Surplus	46,513.56
Earned Surplus	748,415.44
	$894,929.00

14. No formal action to dissolve the petitioner was ever taken by the Board of Directors or the stockholders of the petitioner. Annual meetings of the stockholders of the petitioner were held on April 16, 1946, and April 15, 1947, and special meetings of the Board of Directors were held on April 22, 1946, April 28, 1947, and November 3, 1947. Copies of the minutes of said meetings are attached hereto and marked Exhibits 10-J, 11-K, 12-L, 13-M and 14-N, respectively. Copies of all minutes of the stockholders and directors of the petitioner for the period December 1, 1945, to December 31, 1947, are attached as Exhibits to this Stipulation.

15. Among the assets owned by the petitioner which were covered by said agreement between the petitioner and the Supply Company (Exhibit 8-H hereto) were claims of the petitioner against the United States Government. One of such claims of the petitioner against the United States Government was for payments in connection with the termination of a war contract between the United States and the petitioner which was settled in May, 1946, for

approximately $270,000 after correspondence and negotiations with the Government.

16. Another such claim against the United States Government was for overpayment of rentals which was settled in August, 1946, for approximately $3,300 after correspondence and negotiations with the Government.

17. Another such claim against the United States is for a refund of the petitioner's 1943 excess profits tax in the amount of $25,526.36, plus interest, which the petitioner has not yet collected and which arises from a carry back of an unused excess profits credit from the taxable year 1945 to the taxable year 1943.

18. A claim by the United States Government against the petitioner for defective material delivered prior to January 1, 1946, was settled by the petitioner in October, 1951, for approximately $1,300.

19. In the years 1946 and 1947, the petitioner had correspondence with various United States Government departments with respect to cleanup work which the petitioner was obligated to do under the terms of the contracts which it had entered into in prior years with the United States. In that connection, the petitioner purchased from the United States certain material and machinery owned by the United States but located upon the property formerly owned by the petitioner and used in connection with the performance of such contracts. The amounts necessary for such purchases were supplied by the Supply Company and the proceeds of sales of such material and machinery were realized by the Supply Company.

20. Settlement of the aforesaid claims and the purchases and sales of such material and machinery were negotiated by persons who were officers of the petitioner and also officers of the Supply Company, Bethlehem Steel Company and Bethlehem Steel Corporation, which persons did not receive any compensation from the petitioner during 1946 and 1947 and were compensated by one or more of the other companies.

21. All receipts or payments pursuant to the settlements of the aforesaid claims were or will be realized by or made by the Supply Company directly or indirectly. Entries of receipts or disbursements were not made on the petitioner's books in connection with the settlement of such claims or in connection with the aforesaid purchases and sales during the years 1946 and 1947.

22. In June, 1946, Carl Anderson, a former employee of the petitioner, commenced a suit against the petitioner in the District Court for the Thirteenth Judicial District of Texas for alleged unpaid compensation alleged to be owing to him from the petitioner in the amount of $219,000. The petitioner filed an answer and took other action in that suit from its inception to November 1, 1948, when, after the death of the plaintiff, the suit was dismissed. The litigation expenses in defending the suit were borne partly by the Supply Company and partly by the former stockholders of the petitioner from whom the aforesaid Bethlehem Steel Company purchased the stock of the petitioner.

23. In 1948, the petitioner acquired for approximately $800,000 four sections of a drydock located in Florida and subsequently moved them to Texas. In 1949, the petitioner

bought another section of drydock. Its drydock facilities presently represent an investment of approximately $1,500,000 and it is in the business of renting the drydock.

24. The petitioner did not have any excess profits net income for the taxable year 1946. If the petitioner is entitled to an excess profits credit for the taxable year 1946, such credit will be $74,909.27. If this Court shall determine that the petitioner is entitled to carry back an unused excess profits credit from the taxable year 1946 to the taxable year 1944, such carry back will result in an unused excess profits credit adjustment for the taxable year 1944 under Section 710(b)(3) of the Internal Revenue Code in the amount of $74,909.27.

/s/ GEORGE G. TYLER
Counsel for Petitioner

/s/ DANIEL A. TAYLOR FXG
Chief Counsel,
Internal Revenue Service,
Counsel for Respondent.

Agreement Dated December 19, 1945, between American Well and Prospecting Company and Bethlehem Supply Company (Exhibit 8-H to the Stipulation of Facts)

AGREEMENT dated the 19th day of December, 1945, between AMERICAN WELL AND PROSPECTING COMPANY, a Texas corporation (hereinafter called the American Company), party of the first part, and BETHLEHEM SUPPLY COMPANY, a Delaware corporation (hereinafter called the Supply Company), party of the second part.

WHEREAS the Board of Directors of the American Company and the holder of all of the issued and outstanding capital stock of the American Company have each determined, at meetings duly called and held, by resolutions duly adopted, that it is advisable and in the interest of the American Company that its business and all of its properties and assets (except as hereinafter provided) be acquired by, and (except as hereinafter provided) all its liabilities and obligations be taken over and assumed by, the Supply Company as of the opening of business on January 1, 1946; and

WHEREAS the Board of Directors of the Supply Company has determined at a meeting duly called and held, by resolution duly adopted, that it is advisable and in the interest of the Supply Company that it acquire the business and all of the properties and assets (except as aforesaid), and take over and assume (except as aforesaid) the liabilities and obligations, of the American Company as of the opening of business on January 1, 1946.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH as follows:

Agreement Dated December 19, 1945, between American Well and Prospecting Company and Bethlehem Supply Company (Exhibit 8-H to the Stipulation of Facts)

FIRST. The American Company will sell, convey, assign and transfer to the Supply Company, by an indenture in form satisfactory to the Supply Company, all the real property and interests in real property that are owned by the American Company at the date hereof or shall be acquired by it prior to the time of closing the transaction covered by this Agreement (such time being hereinafter sometimes referred to as the Closing Date), including, without limitation of the foregoing, the interests in real property comprising, or used in connection with, the manufacturing plant of the American Company located in Corsicana, Navarro County, Texas.

SECOND. The American Company will as of the opening of business on January 1st, 1946, sell, assign and transfer to the Supply Company all the following described property, to wit:

(a) Except as hereinafter provided, all and singular the facilities used in or relating to the manufacturing and allied operations carried on by the American Company, including, without limitation of the foregoing, cranes, machines and machine tools, shafting, belting, drives, motors, furnaces, boilers, dies, patterns, tools, generators, transformers, switch gear, drawings, furniture, fixtures, implements, locomotives, engines, cars, wagons, automobiles, trucks, conveyances, and all other like personal property wheresoever situate at said time and owned by the American Company;

(b) All coal, coke, steel, iron, lumber, fuel, oil and other materials and supplies, all products whether pro-

Agreement Dated December 19, 1945, between American Well and Prospecting Company and Bethlehem Supply Company (Exhibit 8-H to the Stipulation of Facts)

duced, manufactured, or fabricated, or in the process of production, manufacture, or fabrication, and all other tangible personal property, goods and chattels of every kind, name and nature (except the personal property referred to in the foregoing clause (a) of this Article Second) wheresoever situate at said time and owned by the American Company;

(c) All rights and interests of the American Company in, to and under all contracts between it and any other party or parties including any and all other contracts which have been acquired by the American Company by assignment or in any other manner or made by or for or on behalf of the American Company, except the rights and interests of the American Company under contracts and leases which pursuant to the specific terms thereof or any applicable provisions of law are unassignable;

(d) All letters patent granted or issued by the United States of America or any other country or government and all applications for any letters patent which are owned by the American Company and all rights and interests of the American Company in, to and under any letters patent so granted or issued and applications for letters patent and in, to and under any and all licenses to manufacture, use or sell any and all improvements, inventions or processes covered by any letters patent or applications therefor, together with the right to sue for and recover damages or profits for any infringement of any of said letters patent prior to the date hereof;

Agreement Dated December 19, 1945, between American Well and Prospecting Company and Bethlehem Supply Company (Exhibit 8-H to the Stipulation of Facts)

(e) All trade marks or trade names owned by the American Company, whether registered in, or otherwise protected by the laws of, the United States of America or any state, territory or dependency thereof or any foreign country or government, and all rights of the American Company in respect of any trade marks or trade names so registered or protected;

(f) All cash on hand and in banks, accounts receivable, notes receivable, prepaid charges, bonds, stocks and other securities of other corporations, claims, demands, equities and choses in action at present accrued or which shall hereafter accrue to the American Company; and

(g) All other property and assets, tangible and intangible, of every name and nature owned by the American Company or to which it may now or hereafter be entitled, except (i) the property referred to in Article First hereof, (ii) the unassignable rights and interests, if any, referred to in the preceding clause (c) hereof and (iii) the corporate records of the American Company and its franchise to be a corporation.

Anything herein to the contrary notwithstanding, the American Company does not hereby agree to sell or convey to the Supply Company, and this Agreement does not provide for the sale of, any of the machines, machine tools or other manufacturing equipment or facilities that are located at the above-mentioned plant at Corsicana, Texas, but are owned by the United States of America or agencies or departments thereof.

Agreement Dated December 19, 1945, between American Well and Prospecting Company and Bethlehem Supply Company (Exhibit 8-H to the Stipulation of Facts)

All the properties, rights and assets of the American Company which it hereby agrees to sell, convey, assign and/or transfer to the Supply Company as aforesaid are hereinafter sometimes collectively referred to as the properties to be sold.

THIRD. The Supply Company shall, and hereby agrees to, assume and pay, discharge or perform, as the case may be, all the liabilities and obligations of the American Company as of the opening of business on January 1, 1946. The Supply Company shall perform, for the account of the American Company, all obligations of the American Company yet to be performed under all contracts and leases of the American Company, whether now existing or hereafter entered into, relating to all or any of the above-mentioned machines, machine tools or other manufacturing equipment or facilities owned by the United States of America and located at the above-mentioned plant at Corsicana, Texas. If the American Company shall at any time hereafter purchase any of such machines, machine tools or other manufacturing equipment or facilities, it shall, unless prohibited from so doing by any agreement between it and the United States of America, resell the same to the Supply Company at the cost thereof to it.

FOURTH. The transaction covered by this Agreement shall be closed at No. 701 East Third Street, in the City of Bethlehem, Pennsylvania, at the opening of business on the 2nd day of January, 1946, at which time and place the American Company will deliver or cause to be delivered to the Supply Company instruments of conveyance, assignment

Agreement Dated December 19, 1945, between American Well and Prospecting Company and Bethlehem Supply Company (Exhibit 8-H to the Stipulation of Facts)

and transfer sufficient, in the opinion of counsel for the Supply Company, to transfer and convey to, and vest in, the Supply Company title to and ownership of all the properties to be sold.

FIFTH. As soon after the Closing Date as conveniently possible the Supply Company shall pay to the American Company for the properties to be sold an amount which shall be the aggregate net book value of the properties to be sold less the aggregate book value of all the liabilities and obligations of the American Company assumed by the Supply Company.

SIXTH. In case it should be found that any rights or interests under any contract of the American Company are not assignable, or any of the obligations of the American Company under any such contract are likewise not assignable, to the Supply Company, the American Company will endeavor, if the Supply Company shall so desire, to obtain any consent necessary by the other party, or parties, to the contract to permit the assignment of such rights or interests or such obligations, and thereafter make such assignment. In any case where such consent cannot be obtained, then, if the Supply Company shall so request, the American Company shall cooperate with the Supply Company to the end that the obligations of the American Company shall be performed in such manner that the value and benefits of the contract in question shall be preserved and shall inure directly or indirectly to the benefit of the Supply Company.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed in their respective corporate

Agreement Dated December 19, 1945, between American Well and Prospecting Company and Bethlehem Supply Company (Exhibit 8-H to the Stipulation of Facts)

names by their respective Presidents or one of their respective Vice-Presidents and their respective corporate seals to be hereunto affixed and to be attested by their respective Secretaries or one of their respective Assistant Secretaries as of the day and year first above written.

AMERICAN WELL AND PROSPECTING COMPANY,

by R. E. McMATH
Vice-President.

Attest:

A. J. SLATER
Assistant Secretary.

BETHLEHEM SUPPLY COMPANY,

by F. A. SHICK
Vice-President.

Attest:

W. M. DRIVER
Assistant Secretary.

Balance Sheet of American Well and Prospecting Company at December 31, 1945 (Exhibit 9-I to the Stipulation of Facts)

AMERICAN WELL AND PROSPECTING COMPANY

BALANCE SHEET—DECEMBER 31, 1945

ASSETS		
Current Assets:		
Cash	$ 2,808	
Inventories	2,312,815	
Accounts receivable (less reserve $15,065)	382,104	$2,697,727
Deferred Notes Receivable		8,000
Capital Assets:		
Property account	1,413,906	
Less—Reserve for depreciation	1,055,553	358,353
		$3,064,080

LIABILITIES		
Current Liabilities:		
Accounts payable	$2,109,118	
Payrolls	14,394	
Accrued taxes	30,152	
Taxes collected from employees and others	11,791	
Other	3,696	$2,169,151
Capital Liabilities:		
Capital Stock:		
1,000 shares ($100 par value each)		100,000
Surplus:		
Paid in	46,514	
Earned	748,415	794,929
		$3,064,080

Minutes of Meeting of Stockholders of American Well and Prospecting Company Held April 16, 1946 (Exhibit 10-J to the Stipulation of Facts)

The Annual Meeting of the Stockholders of AMERICAN WELL AND PROSPECTING COMPANY, a Texas corporation, was held at No. 701 East Third Street, Bethlehem, Pennsylvania, on the 16th day of April, 1946, at 10:30 o'clock in the forenoon, pursuant to a consent and waiver of notice signed by the holder of all the issued and outstanding capital stock of the Company.

In the absence of the President and the Vice Presidents of the Company, Mr. L. D. Brown, a proxy holder, was chosen Chairman of the meeting and presided thereat, and, in the absence of the Secretary of the Company, Mr. W. H. Johnstone, an Assistant Secretary of the Company, kept the minutes thereof.

The Secretary of the meeting called the roll and reported that Bethlehem Steel Company, the registered holder of 1,000 shares, being all the issued and outstanding capital stock of the Company, was represented at the meeting by its proxies, L. D. Brown and W. H. Johnstone.

The Chairman thereupon announced that a quorum was present.

The Secretary of the meeting submitted a waiver of the notice of this meeting and consent to the holding thereof signed by the registered holder of all the issued and outstanding capital stock of the Company.

On motion, duly made and seconded, the following resolution was unanimously adopted:

RESOLVED that the original of the waiver of notice of this meeting and consent to the holding thereof be

Minutes of Meeting of Stockholders of American Well and Prospecting Company Held April 16, 1946 (Exhibit 10-J to the Stipulation of Facts)

filed and preserved among the records of the Company and that a copy thereof be incorporated in the minutes of this meeting.

Such copy is as follows:

AMERICAN WELL AND PROSPECTING COMPANY

CONSENT AND WAIVER OF NOTICE OF ANNUAL MEETING OF STOCKHOLDERS

The undersigned, being the registered owner of all the issued and outstanding shares of the capital stock of AMERICAN WELL AND PROSPECTING COMPANY, a Texas corporation, DOES HEREBY WAIVE notice of the time, place and objects of the annual meeting of the stockholders of said Company scheduled pursuant to its By-laws to be held on the 16th day of April, 1946, at 10:30 o'clock in the forenoon, at 701 E. Third Street, Bethlehem, Pa., and consent that such meeting be held at said time and place for the following purposes:

1. To elect five directors to hold office for the ensuing year.

2. To consider and, if satisfactory, to ratify and approve all action taken by the Board of Directors of said Company since the 17th day of April, 1945.

3. To transact such other business as may properly come before said meeting.

Minutes of Meeting of Stockholders of American Well and Prospecting Company Held April 16, 1946 (Exhibit 10-J to the Stipulation of Facts)

AND THE UNDERSIGNED DOES HEREBY WAIVE any and all notice and requirements provided for by the Constitution or laws of the State of Texas or by the By-laws of said Company or otherwise.

Dated: April 16, 1946.

BETHLEHEM STEEL COMPANY

by

Attest:
W. H. Johnstone
Assistant Secretary.

R. E. McMath
Vice President.
(Corporate Seal)

The minutes of the annual meeting of the stockholders of the Company held on April 17, 1945, were submitted to the meeting, and, on motion, duly made and seconded, in all respects approved.

The Chairman stated that the next business to come before the meeting was the election of five directors, each to hold office until the annual meeting of the stockholders to be held in the year 1947 and until his successor shall have been elected and qualified in his stead or as otherwise provided in the By-laws of the Company.

The Secretary of the meeting submitted a complete, certified list of the stockholders of the Company entitled to vote at the meeting, arranged in alphabetical order, as required by law and stated that said certified list had been prepared at least five days before this meeting and had been kept open at the place of this meeting for said five

Minutes of Meeting of Stockholders of American Well and Prospecting Company Held April 16, 1946 (Exhibit 10-J to the Stipulation of Facts)

days subject to the examination of any stockholder. A copy of said certified list is as follows:

AMERICAN WELL AND
PROSPECTING COMPANY

CERTIFIED LIST OF STOCKHOLDERS

I, W. M. Driver, Assistant Secretary of American Well and Prospecting Company, a Texas corporation, hereby certify that the following is a full, true and correct list in alphabetical order of the stockholders of record of said Company on the date hereof:

Name	Residence	No. of Shares
Bethlehem Steel Company	Bethlehem, Pa.	1,000

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said Company this 11th day of April, 1946.

(Corporate Seal)

W. M. DRIVER
Assistant Secretary.

Minutes of Meeting of Stockholders of American Well and Prospecting Company Held April 16, 1946 (Exhibit 10-J to the Stipulation of Facts)

The Secretary of the meeting stated that there had not been any transfers of stock on the books of the Company since the making of said certified list or within ten days next preceding the meeting, and that the stockholder named in said certified list was entitled to vote for all purposes at this meeting according to the number of shares set opposite its name.

The stock books of the Company were presented to the meeting and they, together with the certified list of stockholders which had previously been submitted to the meeting, remained open to inspection during the meeting.

Nominations for directors having been called for, Messrs. Quincy Bent, N. Berkeley, Paul Mackall, R. E. McMath and F. A. Shick were duly nominated and all of said nominations were duly seconded.

There being no other nominations, the Chairman declared the polls open at 10:40 o'clock in the forenoon and the proxies for Bethlehem Steel Company prepared their ballot in writing and presented it to the Secretary of the meeting. The vote for the election of directors having been taken, the Chairman ordered the polls closed and the Secretary of the meeting, having canvassed the vote cast, reported that Messrs. Quincy Bent, N. Berkeley, Paul Mackall, R. E. McMath and F. A. Shick had been duly elected directors of the Company by the unanimous vote of the registered holder of all the issued and outstanding capital stock of the Company. Said report of the Secretary was, on motion, duly made and seconded, accepted, and the Chairman declared that Messrs. Quincy Bent, N. Berkeley, Paul Mackall, R. E. McMath and F. A. Shick had been duly elected directors of the Company, each to continue in office until the annual

Minutes of Meeting of Stockholders of American Well and Prospecting Company Held April 16, 1946 (Exhibit 10-J to the Stipulation of Facts)

meeting of the stockholders to be held in the year 1947 and until his successor shall have been elected and qualified or as otherwise provided in the By-laws.

The Secretary of the meeting submitted the minute book of the Company containing the minutes of all meetings of the Board of Directors of the Company held since the 17th day of April, 1945.

Thereupon, on motion, duly made and seconded, the following resolution was unanimously adopted:

> RESOLVED that the minutes of the meetings of the Board of Directors of the Company held since the 17th day of April, 1945, and all action therein and thereby shown to have been taken, approved or authorized, by said Board or by the officers of the Company, be, and they hereby are, in all respects, adopted, approved, ratified and confirmed and that in general all things done or caused to be done by said Board or by said officers or any of them in the conduct of the business of the Company be, and they hereby are, in all respects, adopted, approved, ratified and confirmed.

The Chairman directed the Secretary of the meeting to file among the records of the Company the certified list of stockholders, the proxies and the ballots which had been presented to the meeting.

There being no further business to come before the meeting, it was, on motion, duly made and seconded, adjourned.

LDB L. D. BROWN
Chairman

WHJ W. H. JOHNSTONE
Secretary of the Meeting

Minutes of Meeting of Stockholders of American Well and Prospecting Company Held April 15, 1947 (Exhibit 11-K to the Stipulation of Facts)

The Annual Meeting of the Stockholders of AMERICAN WELL AND PROSPECTING COMPANY, a Texas corporation, was held at No. 701 East Third Street, Bethlehem, Pennsylvania, on the 15th day of April, 1947, at 10:30 o'clock in the forenoon, pursuant to a consent and waiver of notice signed by the holder of all the issued and outstanding capital stock of the Company.

In the absence of the President and the Vice-Presidents of the Company, Mr. L. D. Brown, a proxy holder, was chosen Chairman of the meeting and presided thereat, and, in the absence of the Secretary of the Company, Mr. W. H. Johnstone, an Assistant Secretary of the Company, kept the minutes thereof.

The Secretary of the meeting called the roll and reported that Bethlehem Steel Company, the registered holder of 1,000 shares, being all the issued and outstanding capital stock of the Company, was represented at the meeting by its proxies, L. D. Brown and W. H. Johnstone.

The Chairman thereupon announced that a quorum was present.

The Secretary of the meeting submitted a waiver of the notice of this meeting and consent to the holding thereof signed by the registered holder of all the issued and outstanding capital stock of the Company.

On motion, duly made and seconded, the following resolution was unanimously adopted:

RESOLVED that the original of the waiver of notice of this meeting and consent to the holding thereof be filed and preserved among the records of the

Minutes of Meeting of Stockholders of American Well and Prospecting Company Held April 15, 1947 (Exhibit 11-K to the Stipulation of Facts)

Company and that a copy thereof be incorporated in the minutes of this meeting.

Such copy is as follows:

AMERICAN WELL AND PROSPECTING COMPANY

CONSENT AND WAIVER OF NOTICE OF ANNUAL MEETING OF STOCKHOLDERS

The undersigned, being the registered owner of all the issued and outstanding shares of the capital stock of AMERICAN WELL AND PROSPECTING COMPANY, a Texas corporation, DOES HEREBY WAIVE notice of the time, place and objects of the annual meeting of the stockholders of said Company scheduled pursuant to its By-laws to be held on the 15th day of April, 1947, at 10:30 o'clock in the forenoon, at 701 E. Third Street, Bethlehem, Pa., and consent that such meeting be held at said time and place for the following purposes:

1. To elect five directors to hold office for the ensuing year.
2. To consider, and, if satisfactory, to ratify and approve all action taken by the Board of Directors of said Company since the 16th day of April, 1946.
3. To transact such other business as may properly come before said meeting.

AND THE UNDERSIGNED DOES HEREBY WAIVE any and all notice and requirements provided for by the

Minutes of Meeting of Stockholders of American Well and Prospecting Company Held April 15, 1947 (Exhibit 11-K to the Stipulation of Facts)

Constitution or laws of the State of Texas or by the By-laws of said Company or otherwise.

Dated: April 14, 1947.

BETHLEHEM STEEL COMPANY

Attest:
A. J. Slater
Assistant Secretary

by R. E. McMath
Vice President
(Corporate Seal)

The minutes of the annual meeting of the stockholders of the Company held on April 16, 1946, were submitted to the meeting, and, on motion, duly made and seconded, in all respects approved.

The Chairman stated that the next business to come before the meeting was the election of five directors, each to hold office until the annual meeting of the stockholders to be held in the year 1948 and until his successor shall have been elected and qualified in his stead or as otherwise provided in the By-Laws of the Company.

The Secretary of the meeting submitted a complete, certified list of the stockholders of the Company entitled to vote at the meeting, arranged in alphabetical order, as required by law and stated that said certified list had been prepared at least five days before this meeting and had been kept open at the place of this meeting for said five days subject to the examination of any stockholder. A copy of said certified list is as follows:

Minutes of Meeting of Stockholders of American Well and Prospecting Company Held April 15, 1947 (Exhibit 11-K to the Stipulation of Facts)

AMERICAN WELL AND PROSPECTING COMPANY

CERTIFIED LIST OF STOCKHOLDERS

I, A. J. Slater, Assistant Secretary of American Well and Prospecting Company, a Texas corporation, hereby certify that the following is a full, true and correct list in alphabetical order of the stockholders of record of said Company on the date hereof:

Name	Residence	No. of Shares
Bethlehem Steel Company	Bethlehem, Pa.	1,000

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said Company this 10th day of April, 1947.

A. J. Slater
Assistant Secretary.

(Corporate Seal)

The Secretary of the meeting stated that there had not been any transfers of stock on the books of the Company since the making of said certified list or within ten days next preceding the meeting, and that the stockholder named in said certified list was entitled to vote for all purposes at this meeting according to the number of shares set opposite its name.

The stock books of the Company were presented to the meeting and they, together with the certified list of stock-

Minutes of Meeting of Stockholders of American Well and Prospecting Company Held April 15, 1947 (Exhibit 11-K to the Stipulation of Facts)

holders which had previously been submitted to the meeting, remained open to inspection during the meeting.

Nominations for directors having been called for, Messrs. Quincy Bent, N. Berkeley, Paul Mackall, R. E. McMath and F. A. Shick were duly nominated and all of said nominations were duly seconded.

There being no other nominations, the Chairman declared the polls open at 10:40 o'clock in the forenoon and the proxies for Bethlehem Steel Company prepared their ballot in writing and presented it to the Secretary of the meeting. The vote for the election of directors having been taken, the Chairman ordered the polls closed and the Secretary of the meeting, having canvassed the vote cast, reported that Messrs. Quincy Bent, N. Berkeley, Paul Mackall, R. E. McMath and F. A. Shick had been duly elected directors of the Company by the unanimous vote of the registered holder of all the issued and outstanding capital stock of the Company. Said report of the Secretary was, on motion, duly made and seconded, accepted, and the Chairman declared that Messrs. Quincy Bent, N. Berkeley, Paul Mackall, R. E. McMath and F. A. Shick had been duly elected directors of the Company, each to continue in office until the annual meeting of the stockholders to be held in the year 1948 and until his successor shall have been elected and qualified or as otherwise provided in the By-laws.

The Secretary of the meeting submitted the minute book of the Company containing the minutes of all meetings of the Board of Directors of the Company held since the 16th day of April, 1946.

Minutes of Meeting of Stockholders of American Well and Prospecting Company Held April 15, 1947 (Exhibit 11-K to the Stipulation of Facts)

Thereupon, on motion, duly made and seconded, the following resolution was unanimously adopted:

> RESOLVED that the minutes of the meetings of the Board of Directors of the Company held since the 16th day of April, 1946, and all action therein and thereby shown to have been taken, approved or authorized, by said Board or by the officers of the Company, be, and they hereby are, in all respects, adopted, approved, ratified and confirmed and that in general all things done or caused to be done by said Board or by said officers or any of them in the conduct of the business of the Company be, and they hereby are, in all respects, adopted, approved, ratified and confirmed.

The Chairman directed the Secretary of the meeting to file among the records of the Company the certified list of stockholders, the proxies and the ballots which had been presented to the meeting.

There being no further business to come before the meeting, it was, on motion, duly made and seconded, adjourned.

LDB L. D. BROWN
Chairman

WHJ W. H. JOHNSTONE
Secretary of the Meeting

Minutes of Meeting of Board of Directors of American Well and Prospecting Company held April 22, 1946 (Exhibit 12-L to the Stipulation of Facts)

A Special Meeting of the Board of Directors of AMERICAN WELL AND PROSPECTING COMPANY, a Texas corporation, was held at the office of Bethlehem Steel Company in Bethlehem, Pennsylvania, on the 22nd day of April, 1946, at 2:10 o'clock in the afternoon, pursuant to a consent and waiver of notice signed by all the directors of the Company.

The following directors were present:

Messrs. Quincy Bent,
N. Berkeley,
Paul Mackall,
R. E. McMath and
F. A. Shick,

being all the members of the Board.

Mr. Paul Mackall, the President of the Company, acted as Chairman of the meeting, and Mr. R. E. McMath, the Secretary of the Company, kept the minutes thereof.

The Secretary presented to the meeting a written consent to the holding of the meeting and waiver of notice thereof signed by all the members of the Board, a copy of which is as follows:

AMERICAN WELL AND PROSPECTING COMPANY

WAIVER OF NOTICE

Meeting of Board of Directors

We, the undersigned, Directors of the above named corporation, organized and existing under the laws of

Minutes of Meeting of Board of Directors of American Well and Prospecting Company held April 22, 1946 (Exhibit 12-L to the Stipulation of Facts)

the State of Texas, do hereby waive notice of the time, place and objects of a special meeting of the Board of Directors of said corporation, to be held on the 22nd day of April, 1946, at 2:10 o'clock in the afternoon, at the office of Bethlehem Steel Company, Bethlehem, Pennsylvania, and we do hereby consent to the holding of said meeting at said time and place and to the transaction thereat of any business that may come before said meeting.

Dated: April 22, 1946.

Quincy Bent — Paul Mackall
N. Berkeley — R. E. McMath
F. A. Shick

The Secretary reported to the meeting that at the annual meeting of the stockholders of the Company held on April 16, 1946, Messrs. Quincy Bent, N. Berkeley, Paul Mackall, R. E. McMath and F. A. Shick had been duly elected directors of the Company, each to hold office until the annual meeting of the stockholders to be held in the year 1947 and until his successor shall have been chosen and qualified or as otherwise provided in the By-laws of the Company.

The Chairman stated that this meeting had been called for the purpose of organization and the election of officers for the ensuing year and for any other business that may properly come before the meeting.

Thereupon, the following were unanimously elected to hold the offices set opposite their respective names, each to hold such office until his successor shall have been chosen:

Minutes of Meeting of Board of Directors of American Well and Prospecting Company held April 22, 1946 (Exhibit 12-L to the Stipulation of Facts)

President	Mr. Paul Mackall
Vice President	Mr. R. E. McMath
Vice President	Mr. F. A. Shick
Vice President	Mr. J. M. Larkin
Vice President	Mr. G. A. Tompson
Secretary	Mr. R. E. McMath
Assistant Secretary	Mr. W. H. Johnstone
Assistant Secretary	Mr. W. M. Driver
Assistant Secretary	Mr. A. J. Slater
Assistant Secretary	Mr. A. Arthur Jenkins
Assistant Secretary	Mr. R. G. Petri
Treasurer	Mr. J. P. Bender
Assistant Treasurer	Mr. Wm. J. Brown
Assistant Treasurer	Mr. C. E. Snyder
Assistant Treasurer	Mr. A. W. Tarkington
Comptroller	Mr. F. A. Shick
Assistant Comptroller	Mr. R. H. Schlottman
Assistant Comptroller	Mr. W. H. Vannatta
Assistant Comptroller	Mr. H. J. Harper
Auditor	Mr. R. G. Petri

The Chairman directed that the Secretary and the Assistant Secretaries elected at this meeting be sworn to the faithful discharge of their duties as such officers, respectively, and that an oath to such effect be procured from each of them and filed among the records of the Company.

There being no further business to come before the meeting, it was, on motion, duly made and seconded, adjourned.

R. E. McMath
Secretary

Minutes of Meeting of Board of Directors of American Well and Prospecting Company Held April 28, 1947 (Exhibit 13-M to the Stipulation of Facts)

A Special Meeting of the Board of Directors of AMERICAN WELL AND PROSPECTING COMPANY, a Texas corporation, was held at the office of Bethlehem Steel Company in Bethlehem, Pennsylvania, on the 28th day of April, 1947, at 2:15 o'clock in the afternoon, pursuant to a consent and waiver of notice signed by all the directors of the Company.

The following directors were present:

Messrs. Quincy Bent,
N. Berkeley,
Paul Mackall,
R. E. McMath and
F. A. Shick,

being all the members of the Board.

Mr. Paul Mackall, the President of the Company, acted as Chairman of the meeting, and Mr. R. E. McMath, the Secretary of the Company, kept the minutes thereof.

The Secretary presented to the meeting a written consent to the holding of the meeting and waiver of notice thereof signed by all the members of the Board, a copy of which is as follows:

AMERICAN WELL AND PROSPECTING COMPANY

WAIVER OF NOTICE

Meeting of Board of Directors

We, the undersigned, Directors of the above named corporation, organized and existing under the laws of

Minutes of Meeting of Board of Directors of American Well and Prospecting Company Held April 28, 1947 (Exhibit 13-M to the Stipulation of Facts)

the State of Texas, do hereby waive notice of the time, place and objects of a special meeting of the Board of Directors of said corporation, to be held on the 28th day of April, 1947, at 2:15 o'clock in the afternoon, at the office of Bethlehem Steel Company, Bethlehem, Pennsylvania, and we do hereby consent to the holding of said meeting at said time and place and to the transaction thereat of any business that may come before said meeting.

Dated: April 28, 1947.

Quincy Bent — Paul Mackall
N. Berkeley — R. E. McMath
F. A. Shick

The Secretary reported to the meeting that at the annual meeting of the stockholders of the Company held on April 15, 1947, Messrs. Quincy Bent, N. Berkeley, Paul Mackall, R. E. McMath and F. A. Shick had been duly elected directors of the Company, each to hold office until the annual meeting of the stockholders to be held in the year 1948 and until his successor shall have been chosen and qualified or as otherwise provided in the By-laws of the Company.

The Chairman stated that this meeting had been called for the purpose of organization and the election of officers for the ensuing year and for any other business that may properly come before the meeting.

Minutes of Meeting of Board of Directors of American Well and Prospecting Company Held April 28, 1947 (Exhibit 13-M to the Stipulation of Facts)

Thereupon, the following were unanimously elected to hold the offices set opposite their respective names, each to hold such office until his successor shall have been chosen:

President	Mr. Paul Mackall
Vice President	Mr. R. E. McMath
Vice President	Mr. F. A. Shick
Vice President	Mr. J. M. Larkin
Vice President	Mr. G. A. Tompson
Secretary	Mr. R. E. McMath
Assistant Secretary	Mr. W. H. Johnstone
Assistant Secretary	Mr. W. M. Driver
Assistant Secretary	Mr. A. J. Slater
Assistant Secretary	Mr. A. Arthur Jenkins
Assistant Secretary	Mr. R. G. Petri
Treasurer	Mr. J. P. Bender
Assistant Treasurer	Mr. Wm. J. Brown
Assistant Treasurer	Mr. C. E. Snyder
Assistant Treasurer	Mr. A. W. Tarkington
Comptroller	Mr. F. A. Shick
Assistant Comptroller	Mr. R. H. Schlottman
Assistant Comptroller	Mr. H. J. Harper
Auditor	Mr. R. G. Petri

The Chairman directed that the Secretary and the Assistant Secretaries elected at this meeting be sworn to the faithful discharge of their duties as such officers, respectively, and that an oath to such effect be procured from each of them and filed among the records of the Company.

Minutes of Meeting of Board of Directors of American Well and Prospecting Company Held April 28, 1947 (Exhibit 13-M to the Stipulation of Facts)

There being no further business to come before the meeting, it was, on motion, duly made and seconded, adjourned.

R. E. McMath
Secretary

Minutes of Meeting of Board of Directors of American Well and Prospecting Company Held November 3, 1947 (Exhibit 14-N to the Stipulation of Facts)

A Special Meeting of the Board of Directors of AMERICAN WELL AND PROSPECTING COMPANY, a Texas corporation, was held at the office of Bethlehem Steel Company in Bethlehem, Pennsylvania, on the 3rd day of November, 1947, at 2:25 o'clock in the afternoon, pursuant to a consent and waiver of notice signed by all the directors of the Company.

The following directors were present:

Messrs. N. Berkeley,
Paul Mackall,
R. E. McMath and
F. A. Shick,

constituting a majority of the Board and a quorum.

Mr. Paul Mackall, the President of the Company, acted as Chairman of the meeting, and Mr. R. E. McMath, the Secretary of the Company, kept the minutes thereof.

The Secretary presented to the meeting a written consent to the holding of the meeting and waiver of notice thereof signed by all the members of the Board, a copy of which is as follows:

AMERICAN WELL AND PROSPECTING COMPANY

WAIVER OF NOTICE

Meeting of Board of Directors

We, the undersigned, Directors of the above named corporation, organized and existing under the laws of the State of Texas, do hereby waive notice of the time, place and objects of a special meeting of the Board of Directors of said corporation, to be held on the 3rd day of November, 1947, at 2:25 o'clock in the after-

Minutes of Meeting of Board of Directors of American Well and Prospecting Company Held November 3, 1947 (Exhibit 14-N to the Stipulation of Facts)

noon, at the office of Bethlehem Steel Company, Bethlehem, Pennsylvania, and we do hereby consent to the holding of said meeting at said time and place and to the transaction thereat of any business that may come before said meeting.

Dated: November 3, 1947.

Quincy Bent — Paul Mackall
N. Berkeley — R. E. McMath
F. A. Shick

The minutes of the Special Meeting of the Board of Directors held on April 28, 1947, were presented to the meeting, and, on motion, duly made and seconded, in all respects approved as recorded.

The Chairman presented to the meeting the resignation of Mr. Quincy Bent as a director of this Company, effective November 3, 1947, and suggested that action be taken at this meeting to fill the vacancy.

Thereupon, on motion, duly made and seconded, the following resolution was unanimously adopted:

RESOLVED that Mr. S. J. Cort be, and he hereby is, elected a director of this Company to fill the vacancy caused by the resignation of Mr. Quincy Bent.

There being no further business to come before the meeting, it was, on motion, duly made and seconded, adjourned.

R. E. McMATH
Secretary